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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,770	07/02/2003	Todd McNulty	Bench	7153
23217	7590	08/17/2007		
GLENN L. WEBB			EXAMINER	
P.O BOX 951			VALENTI, ANDREA M	
CONIFER, CO 80433			ART UNIT	PAPER NUMBER
			3643	
			MAIL DATE	DELIVERY MODE
			08/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/613,770	<b>Applicant(s)</b> MCNULTY ET AL.	
	<b>Examiner</b> Andrea M. Valenti	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-14,16 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 8, 9, 10, 14 rejected under 35 U.S.C. 102(b) as being anticipated by English translation of German Patent DE 20001566U to Lanz.

Regarding Claims 1, 8, and 14, Lanz teaches a self watering system and method for plant displays, wherein said system comprises a display support structure having downwardly extending legs (Lanz Fig. 4 #13); a top (Lanz Fig. 4 #1) on said display support structure; said top having side panels and a bottom having a water tight connection (Lanz English translation page 5 line7); a reservoir (Lanz Fig. 1 #5) with a plurality of perforations placed in said top between said side panels; said reservoir capable of supporting plants without submersing said plants in Water (Lanz Fig. 3 #11); and a capillary mat placed on top of said reservoir (Lanz #2) for wicking water uniformly from the reservoir (Lanz English Translation page 5 line 17); a self watering system for plant displays with a water supply (Lanz #14 and English translation page 6 last paragraph); said reservoir includes a plurality of perforations forming a honeycomb material for containing water (Lanz Fig. 1 #5).

Regarding Claims 3 and 9, Lanz teaches said reservoir includes: a thickness sufficient to prevent said capillary mat from being substantially submersed in the water

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(Lanz #2; applicant has not claimed a specific thickness numerical dimension range and Lanz Fig. 1 and 3 shows that the capillary mat is not in direct contact with water).

Regarding Claims 4 and 10, Lanz teaches wherein said capillary mat includes: a material for the plants to sit upon while wicking water from said reservoir to the root structure of the plants (Lanz #2).

Claims 5, 11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over English translation of German Patent DE 20001566U in view of U.S. Patent No. 4,428,151 to Solomon.

Regarding Claims 5, 11 and 17, Lanz teaches said capillary mat includes: a material formed from a barrier fabric for the plants to sit upon while wicking water from said reservoir to the root structure of the plants (Lanz #2; English translation page 5 line13-14). Lanz is silent on the capillary mat is explicitly a woven barrier fabric. However, Solomon teaches a capillary mat of woven fabric (Solomon Col. 2 line 40-43). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Solomon at the time of the invention to make it more wear resistant as taught by Solomon.

Claims 6, 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over English translation of German Patent DE 20001566U to Lanz in view of U.S. Patent No. 5,209,015 to Filippi.

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Regarding Claim 6, 12 and 16, Lanz teaches wherein said water supply includes: at least one water supply pipe extending along one side of said top, but is silent on it having a series of spaced perforations for providing water evenly to said reservoir. However, Filippi teaches a water supply with a series of spaced perforation (Filippi Fig. 4 #19). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Filippi at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate equivalent irrigation means selected to prevent root rot and to promote healthy plant development and for a more comprehensive distribution of water to a larger area of plants.

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 20001566U to Lanz in view of United Kingdom Patent GB 2018117 A to Marrison.

Regarding Claim 7 and 13, Lanz is silent on wherein said system includes: at least one stand pipe *for allowing said top to drain to prevent overfilling* (functional language structure must merely be capable of performing this function). However, Marrison teaches a stand pipe in a self watering plant display system (Marrison #12). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Marrison at the time of the invention for ergonomic ease of adding a specific concentration of nutrients and fertilizer to the system.

***Response to Arguments***

Applicant's arguments filed 09 July 2007 have been fully considered but they are not persuasive.

Applicant argues that Lanz does not disclose a capillary mat that wicks water from the reservoir to the plants uniformly. Examiner disagrees and maintains that Lanz does in fact teach this limitation. Lanz's mat (Lanz #2) wicks water and uniformly distributes the water (***Lanz English translation page 5 line 17-18***). Even though the water is wicked with the help of rock wool cubes (Lanz #7) the mat of Lanz still satisfies the claim limitation. The rock wool cubes are uniformly dispersed through the reservoir and the mat uniformly draws water from the reservoir via the rock wool cubes.


Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art of record. The examiner made an attempt to reach applicant Glenn Webb on 8/15/2007 and 8/14/2007 since applicant had requested an interview. The examiner was not able to reach the applicant on these occasions, but applicant can make arrangements for an interview if necessary upon receiving this office action. At this time, the examiner has no suggestions for patentable subject matter. The concepts presented in the application are all old and notoriously well-known concepts in the field of plant husbandry and greenhouse operations. The modifications made to the primary references are all modifications resulting predictable results.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Andrea M. Valenti  
Primary Examiner  
Art Unit 3643

16 August 2007